

Her Majesty the Queen (appellant) v. D.M. (respondent)  
(C53994; 2012 ONCA 520)

**Indexed As: R. v. D.M.**

Ontario Court of Appeal  
Feldman and Watt, JJ.A. and Dambrot, J.(ad hoc)  
August 1, 2012.

**Summary:**

The accused was convicted by a jury of sexual assault, sexual exploitation and invitation to sexual touching. The sexual assaults, including approximately 124 acts of sexual intercourse with the victim, occurred over a three-year period, until the victim was 19. The accused was sentenced to three years' imprisonment. The Crown appealed, arguing that the sentence was manifestly unfit.

The Ontario Court of Appeal allowed the appeal and imposed a global sentence of seven years' imprisonment.

Editor's Note: Certain names in the following case have been initialized or the case otherwise edited to prevent the disclosure of identities where required by law, publication ban, Maritime Law Book's editorial policy or otherwise.

**Criminal Law - Topic 5799.3**

Punishments (sentence) - Prohibition orders - Respecting contact with victims or others - In sentencing an accused for sexual offences, the trial judge imposed a non-communication order for life - On a sentence appeal, the Crown conceded that the non-communication order was not authorized by the Criminal Code - The Ontario Court of Appeal accordingly overturned the non-communication order - Rather, the court ordered that the accused was not to communicate with the complainant directly or indirectly during the balance of the custodial period of his sentence, pursuant to s. 743.21 of the Code - The court stated that the issue of communication could also be further addressed by the Parole Board of Canada - See paragraph 51.

**Criminal Law - Topic 5831.1**

Sentencing - Considerations on imposing sentence - Offences involving breach of trust - [See **Criminal Law - Topic 5846.5**].

**Criminal Law - Topic 5833.1**

Sentencing - Considerations - Child abuse - [See **Criminal Law - Topic 5846.5**].

**Criminal Law - Topic 5846.5**

Sentencing - Considerations on imposing sentence - Sentence precedents (incl. starting point principle and sentencing ranges) - The Ontario Court of Appeal reviewed the case law and discussed the appropriate range of sentence for prolonged sexual assault, including intercourse, by a person in authority on a vulnerable young person - The court concluded

that "... on the issue of the proper range of sentence, although sentencing is always an individualized process of decision-making, where there is prolonged sexual abuse and assault of a child, including penetration, by an adult in a position of trust, the minimum sentence will be five or six years in the penitentiary" - See paragraphs 23 to 44.

### **Criminal Law - Topic 5848.9**

Sentencing - Considerations - Sexual offences against children - [See **Criminal Law - Topic 5846.5**].

### **Criminal Law - Topic 5932**

Sentence - Sexual assault - The accused was convicted of sexual assault, sexual exploitation and invitation to sexual touching and sentenced to three years' imprisonment - The victim was an immigrant girl, living with her aunt and uncle by marriage, the accused - Multiple incidents over a three year period - At age 19, the victim entered an arranged marriage to extricate herself from the situation - The Crown appealed - The Ontario Court of Appeal held that the sentence was manifestly unfit - The trial judge erred in law in setting the range of sentence too low, and then imposing a sentence at the bottom of the range because the circumstances were not the worst - The appellate court imposed a global sentence of seven years - Factors considered were: abuse of trust, victim vulnerability, threats of deportation, accused groomed victim for sexual activity by forcing her to watch pornographic videos and inserting carrot into her vagina in preparation for sexual intercourse, complete lack of remorse, no prior record and steady employment record - See paragraphs 1 to 22 and 45 to 51.

### **Criminal Law - Topic 5949**

Sentence - Sexual interference or exploitation by person in position of trust or authority - [See **Criminal Law - Topic 5932**].

### **Criminal Law - Topic 5963**

Sentence - Inviting sexual touching - [See **Criminal Law - Topic 5932**].

### **Cases Noticed:**

- R. v. D.D. (2002), 157 O.A.C. 323; 58 O.R.(3d) 788 (C.A.), refd to. [para. 19].
- R. v. B. (1990), 36 O.A.C. 307 (C.A.), refd to. [para. 19].
- R. v. R.G., [2010] O.T.C. Uned. 4082; 2010 ONSC 4082, refd to. [para. 21].
- R. v. C.A.M., [1996] 1 S.C.R. 500; 194 N.R. 321; 73 B.C.A.C. 81; 120 W.A.C. 81, refd to. [para. 24].
- R. v. L.M., [2008] 2 S.C.R. 163; 374 N.R. 351, refd to. [para. 24].
- R. v. Stuckless (G.) (1998), 111 O.A.C. 357; 127 C.C.C.(3d) 225 (C.A.), refd to. [para. 27].
- R. v. Woodward (T.E.C.) (2011), 284 O.A.C. 151; 107 O.R.(3d) 81; 2011 ONCA 610, refd to. [para. 37].
- R. v. G.A.G. (2006), 206 O.A.C. 134 (C.A.), refd to. [para. 40].
- R. v. W.W.M. (2006), 206 O.A.C. 342; 205 C.C.C.(3d) 410 (C.A.), refd to. [para. 40].
- R. v. C.B. (2008), 237 O.A.C. 387; 2008 ONCA 486, refd to. [para. 40].
- R. v. T.C. (2004), 190 O.A.C. 380 (C.A.), refd to. [para. 40].
- R. v. D.A.H. (2003), 168 O.A.C. 176 (C.A.), refd to. [para. 40].

R. v. J.L., [2009] O.A.C. Uned. 538 (C.A.), refd to. [para. 41].  
R. v. A.G. (2004), 191 O.A.C. 386; 190 C.C.C.(3d) 508 (C.A.), refd to. [para. 42].  
R. v. P.M. (2012), 289 O.A.C. 352; 2012 ONCA 162, refd to. [para. 43].  
R. v. Rezaie (M.) (1996), 96 O.A.C. 268; 31 O.R.(3d) 713 (C.A.), refd to. [para. 49].

**Counsel:**

Matthew Asma, for the appellant;  
Mark Halfyard, for the respondent.

This sentence appeal was heard on January 27, 2012, before Feldman and Watt, JJ.A. and Dambrot, J.(ad hoc), of the Ontario Court of Appeal. The following decision was released for the court, by Feldman, J.A., on August 1, 2012.

Appeal allowed.

Editor: Elizabeth M.A. Turgeon